Nos. 19-715, 19-760

IN THE

Supreme Court of the United States

DONALD J. TRUMP, ET AL., *Petitioners*,

v.

MAZARS USA, LLP, ET AL., *Respondents*.

DONALD J. TRUMP, ET AL., *Petitioners*,

v.

DEUTSCHE BANK AG, ET AL., *Respondents*.

On Writs of Certiorari to the United States Courts of Appeals for the District of Columbia and Second Circuits

BRIEF OF CONSTITUTIONAL ACCOUNTABILITY CENTER AS *AMICUS CURIAE* IN SUPPORT OF RESPONDENTS

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INTEREST OF *AMICUS CURIAE*[1]

Amicus Constitutional Accountability Center (CAC) is a think tank, public interest law firm, and action center dedicated to fulfilling the progressive promise of our Constitution's text and history. CAC works in our courts, through our government, and with legal scholars to improve understanding of the Constitution and preserve the rights, freedoms, and structural safeguards that our nation's charter guarantees. CAC accordingly has a strong interest in this case and in the scope of Congress's investigative powers.

INTRODUCTION

This Court has long recognized that "[t]he power of the Congress to conduct investigations is inherent in the legislative process," and "[t]hat power is broad." *Watkins v. United States*, 354 U.S. 178, 187 (1957). Indeed, it "is as penetrating and far-reaching as the potential power to enact and appropriate under the Constitution." *Barenblatt v. United States*, 360 U.S. 109, 111 (1959). Exercising that power, the House Committee on Oversight and Reform ("Oversight Committee") subpoenaed certain documents from Mazars USA, LLP ("Mazars") related to President Trump's and his businesses' finances from 2011 through the present. The Committee did so as part of its investigation regarding "Executive Branch ethics and conflicts of interest, Presidential financial disclosures, federal-lease

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[1] The parties have consented to the filing of this brief, and their letters of consent have been filed with the Clerk. Under Rule 37.6 of the Rules of this Court, *amicus* states that no counsel for a party authored this brief in whole or in part, and no counsel or party made a monetary contribution intended to fund the preparation or submission of this brief. No person other than *amicus* or its counsel made a monetary contribution to its preparation or submission.

management, and possible violations of the Emoluments Clauses . . . to determine the adequacy of existing laws and perform related agency oversight." Resps. Br. 29.

Meanwhile, two other House committees, the Committee on Financial Services ("Financial Services Committee") and the Permanent Select Committee on Intelligence ("Intelligence Committee"), subpoenaed certain financial documents from Deutsche Bank AG and Capital One Financial Corporation ("Capital One") related to President Trump's, his family's, and his businesses' finances. The Financial Services Committee did so as part of its "industry-wide investigation into financial institutions' compliance with banking laws, including the Bank Secrecy Act, to determine whether current law and banking practices adequately guard against foreign money laundering and high-risk loans." *Id.* at 17-18. Specifically, the Committee understood that "public reports have raised significant questions about Deutsche Bank's and Capital One's banking practices—and given that both institutions host accounts associated with President Trump—the Committee's industry-wide investigations seek information about those accounts." *Id.* at 20. The Intelligence Committee, in turn, subpoenaed financial documents as part of its investigation into "whether foreign actors have financial leverage over President Trump, whether legislative reforms are necessary to address these risks, and whether our Nation's intelligence agencies have the resources and authorities needed to combat such threats." *Id.* at 25.

Petitioners sued to block Mazars, Deutsche Bank, and Capital One from complying with these subpoenas, arguing that Congress has no legitimate legislative basis for requesting these documents. But the respective Committees' legitimate legislative bases are

plain: these documents would aid the Oversight Committee's determination about whether and how to legislate with respect to disclosure and conflict-of-interest laws; they would aid the Financial Services Committee's investigation into legislative fixes to combat money laundering; and they would aid the Intelligence Committee's investigation into legislation that could stymie foreign influence over candidates and foreign interference in our elections and political process. Petitioners' arguments to the contrary are at odds with decades of this Court's precedents and would, if accepted, significantly cabin the scope of Congress's authority to investigate, thereby undermining Congress's ability to fulfill its institutional role in our system of government.

Significantly, the practice of legislative investigation predates the birth of the United States, and that power was exercised by Congress from the beginning of the Republic. As early as 1792, Congress investigated a military defeat by "send[ing] for necessary persons, papers and records" from the Washington Administration, and James Madison and other Framers of the Constitution voted in favor of this inquiry. *McGrain v. Daugherty*, 273 U.S. 135, 161 (1927). That investigation was only the first of many other congressional investigations that have followed in the years since.

Consistent with this long history, this Court has repeatedly affirmed the existence of Congress's power to investigate and reiterated that the scope of that power is co-extensive with the scope of Congress's power to legislate. As this Court has explained, Congress's power to investigate is "broad," encompassing "inquiries concerning the administration of existing laws as well as proposed or possibly needed statutes" and including "surveys of defects in our social, economic or

political system for the purpose of enabling the Congress to remedy them." *Watkins*, 354 U.S. at 187. In discussing the breadth of Congress's investigatory power, this Court has made clear that the judiciary should not second-guess the legislature's judgment as to what investigations will facilitate Congress's exercise of its legislative power. Thus, courts must uphold a congressional request for records so long as it is not "plainly incompetent or irrelevant to any lawful purpose [of Congress] in the discharge of [its] duties." *McPhaul v. United States*, 364 U.S. 372, 381 (1960) (quoting *Endicott Johnson Corp. v. Perkins*, 317 U.S. 501, 509 (1943)).

Applying this standard, the courts below correctly held that the Committees' requests are valid. To start, the Oversight Committee's request for financial documents from Mazars could produce information that would inform Congress's consideration of legislation that would strengthen financial disclosure laws and impose new restrictions on presidential conflicts of interests. In fact, Congress is right now considering numerous pieces of legislation that would do just that. Even though Congress need not point to proposed legislation to justify an investigation so long as the investigation is consistent with Congress's "*potential* power to enact and appropriate under the Constitution," *Barenblatt*, 360 U.S. at 111 (emphasis added), the existence of such proposed legislation underscores the legitimacy of Congress's request for these documents.

Likewise, the Financial Services Committee's requests for financial documents could produce information that would inform Congress's consideration of legislation that would strengthen laws that regulate lending practices of financial institutions and that prevent the use of shell companies. And the Intelligence Committee's request for financial documents could aid

its consideration of legislation that would limit foreign influence in our political process, including financial entanglements of the President. In fact, Congress is currently considering numerous pieces of legislation that would do just these things.

In short, an investigation exceeds Congress's powers only when it is "plainly incompetent or irrelevant to any lawful purpose [of Congress] in the discharge of [its] duties." *McPhaul*, 364 U.S. at 381 (quoting *Endicott Johnson Corp.*, 317 U.S. at 509). Petitioners have not made—and cannot make—that showing here.

ARGUMENT

I. Legislative Investigations Have a Long History, Both in the British Parliament and in Early American Congresses.

The practice of legislative oversight predates the birth of the United States, with "roots [that] lie deep in the British Parliament." James M. Landis, *Constitutional Limitations on the Congressional Power of Investigation*, 40 Harv. L. Rev. 153, 159 (1926). In the 1680s, for example, the British Parliament investigated issues as diverse as the conduct of the army in "sending Relief" into Ireland during war, "Miscarriage in the Victualing of the Navy," and the imposition of martial law by a commissioner of the East India Company. *Id.* at 162 (internal citation and quotation marks omitted). These investigations were premised on the idea that Parliament could not properly legislate if it could not gather information relevant to the topics on which it wanted to legislate. Thus, for instance, a February 17, 1728, entry in the *Commons' Journal* described a parliamentary committee's investigation of bankruptcy laws as follows:

> *Ordered*, That the Committee, appointed to inspect what Laws are expired, or near expiring,

> and to report their Opinion to the House, which of them are fit to be revived, or continued, and who are instructed to inspect the Laws related to Bankrupts, *and consider what Alterations are proper to be made therein*, have Power to send for Persons, Papers, and Records, with respect to that Instruction.

Id. at 163 (emphasis added) (internal citation omitted).

This early British practice of legislative investigation was replicated by American colonial legislatures. "The colonial assemblies, like the House of Commons, very early assumed, usually without question, the right to investigate the conduct of the other departments of the government and also other matters of general concern brought to their attention." C.S. Potts, *Power of Legislative Bodies To Punish for Contempt*, 74 U. Pa. L. Rev. 691, 708 (1926). For example, in 1722, the Massachusetts House of Representatives declared that it was "not only their Privilege but Duty to demand of any Officer in the pay and service of this Government an account of his Management while in the Public Imploy." *Id.* (internal citation omitted). In exercising that duty, the House called before it two military officers to question them about their "failure to carry out certain offensive operations ordered by the [H]ouse at a previous session," over the objection of the Governor. *Id.* Similarly, the Pennsylvania Assembly had "a standing committee to audit and settle the accounts of the treasurer and of the collectors of public revenues," *id.* at 709, which had the "full Power and Authority to send for Persons, Papers and Records by the Sergeant at Arms of this House," *id.* (internal citation omitted).

After the nation's Founding, early state legislatures also understood themselves to have the power to investigate, and even to enforce subpoenas against

witnesses. For example, in 1824, the New York House of Representatives appointed a special committee to investigate corruption at the Chemical Bank and the handling of its charter. In connection with this investigation, the committee required a witness to appear before the committee and adopted the following resolution when he refused:

> *Resolved*, That there was no sufficient ground for his refusal to appear before the committee, and testify; that he was guilty of a misdemeanor and contempt of the House; that the sergeant-at-arms deliver him to the keeper of the jail of the county of Albany; that he be imprisoned until further order of the House, and that the Speaker issue his warrant accordingly.

Id. at 718 (internal citation omitted).

The United States Congress also demonstrated early in the Republic's history that it viewed its authority to investigate broadly. As the Supreme Court would later recount, the first Congresses used compulsory process to investigate "suspected corruption or mismanagement of government officials." *Watkins*, 354 U.S. at 192. For instance, the House created a special committee in March 1792 to inquire into a significant military defeat. Records of the debate in the House show that a majority of Members believed that Congress should establish a select committee to investigate this matter itself, rather than direct the President to investigate. For example, Representative Thomas Fitzsimons believed it "out of order to request the President . . . to institute . . . a Court of Inquiry," and instead argued that a committee was better suited "to inquire relative to such objects as came properly under the cognizance of this House, particularly respecting the expenditures of public money." 3 Annals of Cong. 492 (1792). Similarly, Representative

Abraham Baldwin "was convinced the House could not proceed but by a committee of their own," which "would be able to throw more light on the subject, and then the House would be able to determine how to proceed." *Id.* Thus, the House rejected a proposal directing the President to carry out the investigation, and instead passed, 44-10, a resolution creating its own investigative committee:

> *Resolved*, That a committee be appointed to inquire into the causes of the failure of the late expedition under Major General St. Clair; and that the said committee be empowered to call for such persons, papers, and records, as may be necessary to assist their inquiries.

Id. at 493. Notably, "Mr. Madison, who had taken an important part in framing the Constitution only five years before, and four of his associates in that work, were members of the House of Representatives at the time, and all voted [in favor of] the inquiry." *McGrain*, 273 U.S. at 161 (citing 3 Annals of Cong. 494 (1792)). Historical evidence suggests that President Washington cooperated fully with this investigation.[2]

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[2] President Washington's Cabinet agreed that the committee was authorized to make such inquiries, and advised the President that he "ought to comply with the requests of Congress although he had the right to refuse to communicate any papers that would tend to injure the public good." William Patrick Walsh, *The Defeat of Major General Arthur St. Clair, November 4, 1791: A Study of the Nation's Response 1791-1793*, at 58-59 (Feb. 1977) (unpublished Ph.D. dissertation, Loyola University of Chicago), available at https://ecommons.luc.edu/cgi/viewcontent.cgi?article=2772&context=luc_diss. On April 4, 1792, Congress passed a bill requesting that the President "cause the proper officers" to produce "such papers of a public nature" as may be necessary for the investigation, 3 Annals of Cong. 536 (1792), and the Washington Administration complied, turning over all relevant documents because none were found to prejudice the public good,

Numerous similar congressional investigations took place over the succeeding years. In 1800, a select committee was formed to investigate the circumstances of the Treasury Secretary's resignation. 10 Annals of Cong. 787-88 (1800). Representative Roger Griswold believed such an investigation was important because if there is an investigation "on the retirement of every Secretary of the Treasury from office" about "his official conduct, it will operate as a general stimulus to the faithful discharge of duty." *Id.* at 788. The committee was directed "to examine into the state of the Treasury, the mode of conducting business therein, the expenditures, of the public money, and to report such facts and statements as will conduce to a full and satisfactory understanding of the state of the Treasury." *Id.* at 796-97.

Early congressional committees also began investigations concerning "the enactment of new statutes or the administration of existing laws." *Watkins*, 354 U.S. at 192-93. For instance, in 1827, the House Committee on Manufactures initiated an investigation to consider a revision of the tariff laws, and sought the power to send for persons and papers in aid of that investigation. This proposal generated substantial debate. Although some members of Congress thought "that the only cases in which the House has a right to send for persons and papers, are those of impeachment, and of contested elections," Landis, *supra*, at 178 n.102 (internal citation omitted), other Members believed that where Congress is considering a measure "deeply affecting the interest of every man in the United States," Congress may "compel the attendance of witnesses who can give . . . practical information

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Walsh, *supra*, at 59 (citing Letter from President Washington to Henry Knox (Apr. 4, 1792), *in* XXXII Writings of Washington 15).

upon the subject," *id.* at 178 n.103 (internal citation omitted). In the end, Congress voted to grant the committee subpoena power. 4 Cong. Deb. 861 (1827).

Some early investigations focused specifically on the President and his Cabinet. For example, in 1832, the House created a committee to discover "whether an attempt was made by the late Secretary of War, John H. Eaton, fraudulently to give to Samuel Houston—a contract—and that the said committee be further instructed *to inquire whether the President of the United States had any knowledge of such attempted fraud*, and whether he disapproved of the same; and that the committee have power to send for persons and papers." Landis, *supra*, at 179 (quoting H.R. Rep. No. 502, 22d Cong. 1st Sess., Ser. No. 228) (emphasis added). Later, in 1860, Congress created a special committee to determine whether "any person connected with the present Executive Department of this Government," Cong. Globe, 36th Cong., 1st Sess. 1017-18 (1860), improperly attempted to influence legislation in the House "by any promise, offer, or intimation of employment, patronage, office, favors, or rewards, under the Government, or under any department, officer, or servant thereof, to be conferred or withheld in consideration of any vote given," *id.* at 1018. The committee had the "power to send for persons and papers, examine witnesses, and leave to report at any time, by bill or otherwise." *Id.*

Finally, early Congresses assumed that the individuals who could be held in contempt for refusing to cooperate with investigations were not limited to members of Congress. For example, in 1795, Robert Randall was accused of attempting to bribe three members of the House of Representatives, and was brought before the House, which overwhelmingly approved a resolution finding him guilty of attempting to

corrupt the integrity of Members. The resolution ordered Randall to be "brought to the bar, reprimanded by the Speaker, and committed to the custody of the Sergeant-at-Arms until further order of this House." Potts, *supra*, at 719-20 (internal citation omitted). This case was significant because there was "no division of opinion among the members present, several of whom had been members of the Constitutional Convention, as to the power of the house to punish a non-member for such an offense." *Id.* at 720.[3]

Similarly, in 1859, a committee created to investigate the raid on Harper's Ferry attempted to subpoena as a witness Thaddeus Hyatt, and when he refused to appear, the Senate voted on a resolution directing that Hyatt be imprisoned in the House until he was willing to testify. *McGrain*, 273 U.S. at 161-62. The resolution overwhelmingly passed, with numerous Senators speaking in favor of the Senate's power to subpoena witnesses as part of an investigation. Senator William P. Fessenden noted that the subpoena power "has been exercised by Parliament, and by all legislative bodies down to the present day without dispute," and that "the power to inquire into subjects upon which [legislatures] are disposed to legislate" should not be "lost" to the Senate. Cong. Globe, 36th Cong., 1st Sess. 1102 (1860). He believed that Congress's power included the authority "to compel [witnesses] to come before us" where the witness "will not give [information] to us." *Id.* Likewise, Senator John J. Crittenden argued that the Senate has "the power of instituting an inquiry," and that it "ha[s] a right, in consequence of it, a

[3] This congressional power to punish for contempt was approved by an early Supreme Court decision, *Anderson v. Dunn*, 19 U.S. (6 Wheat.) 204 (1821), in which the Court upheld the Speaker's warrant for the arrest of an individual who attempted to bribe a Member of the House. *Id.* at 224-35.

necessary incidental power, to summon witnesses, if witnesses are necessary." *Id.* at 1105.

In short, the power to investigate, and to subpoena relevant witnesses and documents, has been treated as a core congressional power since the early days of the Republic. Since then, Congress has used its subpoena power to investigate a broad range of matters, including the "means used to influence the nomination of candidates for the Senate," *Reed v. Cty. Comm'rs of Delaware Cty., Pa*, 277 U.S. 376, 386 (1928), alleged "interference with the loyalty, discipline, or morale of the Armed Services," *Eastland v. U.S. Servicemen's Fund*, 421 U.S. 491, 500 (1975), the problem of "mob violence and organized crime," *In re the Application of U.S. Senate Permanent Subcomm. on Investigations*, 655 F.2d 1232, 1233 (D.C. Cir. 1981), and the prevention of "sex trafficking, on the Internet," *Senate Permanent Subcomm. v. Ferrer*, 199 F. Supp. 3d 125, 128 (D.D.C. 2016), *vacated as moot*, 856 F.3d 1080 (D.C. Cir. 2017). As the next Section discusses, the Supreme Court has repeatedly recognized that the congressional power to investigate is as broad as this history suggests.

II. This Court Has Consistently Affirmed That Congress's Power to Investigate Is Coextensive With Its Power to Legislate.

Consistent with this long history, this Court has recognized that Congress's power to investigate is inherent in its power to legislate—and that this power is broad. In *McGrain v. Daugherty*, the Court considered whether the Senate, in the course of an investigation regarding the Department of Justice, could compel a witness—in that case, the Attorney General's brother—to appear before a Senate committee to give testimony. 273 U.S. at 150-52. The Court held that "the Senate—or the House of Representatives, both

being on the same plane in this regard—has power, through its own process, to compel a private individual to appear before it or one of its committees and give testimony needed to enable it efficiently to exercise a legislative function belonging to it under the Constitution." *Id.* at 154. As the Court explained, the power to compel witnesses to testify is an essential aspect of the power to legislate:

> A legislative body cannot legislate wisely or effectively in the absence of information respecting the conditions which the legislation is intended to affect or change; and where the legislative body does not itself possess the requisite information—which not infrequently is true—recourse must be had to others who do possess it.

Id. at 175.

Applying these principles, the Court then asked whether the particular subpoena at issue was designed "to obtain information in aid of the legislative function." *Id.* at 176. The Court concluded that it was: "the subject to be investigated was the administration of the Department of Justice—whether its functions were being properly discharged or were being neglected or misdirected." *Id.* at 177. As the Court explained: "Plainly the subject was one on which legislation could be had and would be materially aided by the information which the investigation was calculated to elicit," *id.*, especially in view of the fact that the powers of the Department of Justice and the Attorney General were subject to legislation. *Id.* at 178.

Two years later, the Court reiterated that "the power of inquiry is an essential and appropriate auxiliary to the legislative function." *Sinclair v. United States*, 279 U.S. 263, 291 (1929). It thus affirmed an

individual's conviction for contempt of Congress under 2 U.S.C. § 192, which provides for the criminal punishment of witnesses who refuse to answer questions or provide documents pertinent to a congressional investigation. Rejecting the defendant's claim that the investigation at issue was not related to legislation, the Court stated that because Congress can legislate "respecting the naval oil reserves" and "other public lands and property of the United States," a Senate committee "undoubtedly" had the power "to investigate and report what had been and was being done by executive departments under the Leasing Act, the Naval Oil Reserve Act, and the President's order in respect of the reserves and to make any other inquiry concerning the public domain." *Sinclair*, 279 U.S. at 294.

The Court again outlined a broad view of Congress's power to investigate in its 1955 decision in another case involving 2 U.S.C. § 192. As in *McGrain*, the Court in *Quinn v. United States*, 349 U.S. 155 (1955), described the breadth of Congress's investigatory powers:

> There can be no doubt as to the power of Congress, by itself or through its committees, to investigate matters and conditions relating to contemplated legislation. This power, deeply rooted in American and English institutions, is indeed co-extensive with the power to legislate. Without the power to investigate—including of course the authority to compel testimony, either through its own processes or through judicial trial—Congress could be seriously handicapped in its efforts to exercise its constitutional function wisely and effectively.

Id. at 160-61. Similarly, in *Watkins v. United States*, the Court made clear yet again that "an investigation is part of lawmaking," 354 U.S. at 197, and once more

described the congressional investigatory power expansively:

> The power of the Congress to conduct investigations is inherent in the legislative process. That power is broad. It encompasses inquiries concerning the administration of existing laws as well as proposed or possibly needed statutes. It includes surveys of defects in our social, economic or political system for the purpose of enabling the Congress to remedy them. It comprehends probes into departments of the Federal Government to expose corruption, inefficiency or waste.

Id. at 187. And again, in *Eastland v. U.S. Servicemen's Fund*, the Court recognized that "the power to investigate is inherent in the power to make laws," and that the "[i]ssuance of subpoenas . . . has long been held to be a legitimate use by Congress of its power to investigate." 421 U.S. at 504. Indeed, the Court ruled, the "power of inquiry" is such "an integral part of the legislative process" that the Speech or Debate Clause provides complete immunity for Congressmembers' decision to issue a subpoena. *Id.* at 505, 507. "The issuance of a subpoena pursuant to an authorized investigation," as the Court explained, is "an indispensable ingredient of lawmaking." *Id.* at 505.

Finally, the Court relied on "Congress' broad investigative power" in upholding a statute that required the preservation of presidential materials from the Nixon Administration. Among the "substantial public interests that led Congress to seek to preserve [these] materials" was "Congress' need to understand how [our] political processes had in fact operated" during "the events leading to [Nixon]'s resignation . . . in order to gauge the necessity for remedial legislation."

Nixon v. Adm'r of Gen. Servs., 433 U.S. 425, 453 (1977).

In sum, because the scope of its investigatory power is "co-extensive with the power to legislate," *Quinn*, 349 U.S. at 160, "[t]he power of inquiry has been employed by Congress throughout our history, over the whole range of the national interests concerning which Congress might legislate or decide upon due investigation not to legislate," *Barenblatt*, 360 U.S. at 111. The subpoenas at issue here are plainly valid exercises of that power, as the next Section discusses.

III. The Committees' Requests For Documents In These Cases Fall Well Within Congress's Investigatory Powers.

As described above, Congress's power to investigate is "broad," encompassing "inquiries concerning the administration of existing laws as well as proposed or possibly needed statutes." *Watkins*, 354 U.S. at 187. This Court therefore must uphold the congressional subpoenas so long as they are not "plainly incompetent or irrelevant to any lawful purpose [of Congress] in the discharge of [its] duties." *McPhaul*, 364 U.S. at 381 (quoting *Endicott Johnson Corp.*, 317 U.S. at 509).

1. The Oversight Committee's investigation—and the related subpoena—plainly satisfy this test. After hearing substantial evidence that President Trump may not have complied with certain financial disclosure requirements, and that he may have conflicts of interest that could affect his ability to make impartial decisions as President, the Committee subpoenaed Mazars for financial records and other documents relating to President Trump and his businesses. In his memorandum to the Committee, Chairman Elijah Cummings explained that the Committee was subpoenaing documents to investigate, among other things,

"whether [President Trump] has undisclosed conflicts of interest that may impair his ability to make impartial policy decisions" and "whether [he] has accurately reported his finances to the Office of Government Ethics and other federal entities." Pet. App. 9a (internal citation omitted).

These subjects of investigation easily fall within Congress's power to legislate—they are inquiries into the "administration of existing laws as well as proposed or possibly needed statutes," *Watkins*, 354 U.S. at 187. This Court has explained that Congress's investigatory power includes "surveys of defects in our social, economic or political system for the purpose of enabling the Congress to remedy them," including defects like "corruption, inefficiency or waste." *Id.* Congress's investigation into the President's compliance with disclosure requirements in the Ethics in Government Act of 1978 relates to the administration of that statute, as well as to Congress's deliberations about whether the statute should be strengthened. As the court below recognized, Congress could enact legislation that requires Presidents "to file reports more frequently, to include information covering a longer period of time, or to provide new kinds of information such as past financial dealings with foreign businesses or current liabilities of closely held companies." Pet. App. 44a.

Importantly, Congress need not point to any proposed legislation to justify an investigation. "The very nature of the investigative function—like any research—is that it takes the searchers up some 'blind alleys' and into nonproductive enterprises. To be a valid legislative inquiry there need be no predictable end result." *Eastland*, 421 U.S. at 509. Congress's investigatory power "is as penetrating and far-reaching as the *potential* power to enact and appropriate under

the Constitution." *Barenblatt*, 360 U.S. at 111 (emphasis added).

Nonetheless, the existence here of specific pieces of legislation that Congress is considering underscores the validity of this investigation. For instance, H.R. 1 would require the President to file a new financial disclosure report within 30 days of taking office and would prohibit the President from contracting with the United States government. *See* Press Release, House Comm. on Oversight & Reform, Chairman Cummings Issues Statement on H.R. 1 (Jan. 4, 2019), https://tinyurl.com/CummingsHR1PressRelease. Moreover, the bill would require the President to "divest of all financial interests that pose a conflict of interest" by converting those interests to cash or placing them in a blind trust, or disclosing information about them. H.R. 1, 116th Cong. tit. VIII, § 8012 (2019). The House is also considering a bill to strengthen the Office of Government Ethics by making its Director removable only for cause, *see* H.R. 745, 116th Cong. § 3 (2019), a bill that would prohibit the President and affiliated "significant business interest[s]" from engaging in certain commercial transactions with the federal government, *see* H.R. 706, 116th Cong. § 241(a) (2019), and a bill that would extend anti-nepotism laws to the White House Office and Executive Office of the President, *see* H.R. 681, 116th Cong. (2019).

2. The Financial Services and Intelligence Committees' investigations—and the subpoenas they have issued in furtherance of those investigations—plainly satisfy this Court's test as well. First, the Financial Services Committee has subpoenaed financial records related to President Trump, his family, and his businesses from Deutsche Bank and Capital One. As Chairwoman Maxine Waters explained, the Committee is "investigating the questionable financing

provided to President Trump and The Trump Organization by banks like Deutsche Bank to finance its real estate properties." 165 Cong. Rec. H2698 (daily ed. Mar. 13, 2019) (statement of Rep. Waters). This investigation will aid the Committee in determining whether and how to strengthen federal banking laws, particularly with respect to lending practices and the prevention of money laundering and loan fraud.

Second, the Intelligence Committee has similarly subpoenaed financial records related to President Trump, his family, and his businesses from Deutsche Bank. These subpoenas further the Committee's investigation of President Trump's entanglements with foreign entities following reports of decades of intersection between President Trump's business interests and Russia-linked entities, including at Deutsche Bank. As Chairman Adam Schiff explained, the Committee is gathering information to decide whether and how to "[s]trengthen legal authorities and capabilities for our intelligence and law enforcement agencies to better track illicit financial flows, including through shell companies, real estate and other means; to better identify counterintelligence risks; and to expose interference by foreign actors." *Id.* at H3482 (daily ed. May 8, 2019) (statement of Rep. Schiff).

These subjects of investigation easily fall within Congress's power to legislate—they are inquiries into the "administration of existing laws as well as proposed or possibly needed statutes," *Watkins*, 354 U.S. at 187. As the court below recognized, "[t]he Committees' interests concern national security and the integrity of elections, and, more specifically, enforcement of anti-money-laundering/counter-financing of terrorism laws, terrorist financing, the movement of illicit funds through the global financial system including the real estate market, the scope of the Russian government's

operations to influence the U.S. political process, and whether the [President] was vulnerable to foreign exploitation." J.A. 284a. These legislative interests are hardly "plainly incompetent or irrelevant to any lawful [legislative] purpose." *McPhaul*, 364 U.S. at 381 (quoting *Endicott Johnson Corp.*, 317 U.S. at 509).

Again, while Congress need not point to any proposed legislation to justify an investigation, the existence here of specific pieces of legislation that Congress is considering underscores the validity of this investigation. The Financial Services Committee is considering legislation that would increase transparency regarding ownership of anonymous shell corporations. *See, e.g.*, H.R. 2514, 116th Cong. (2019) (making reforms to the Federal Bank Secrecy Act and anti-money laundering provisions). And Congress is also considering legislation that would protect the American political system from foreign influence. *See, e.g.*, H.R. 1, 116th Cong. (2019) (improving election security and oversight and providing for national strategy to combat foreign interference).

3. Petitioners insist that this Court should disregard these plainly valid legislative purposes because courts must discern a subpoena's "primary purpose," and, in their view, Congress's primary purpose with these subpoenas is "law enforcement." Pet'rs Br. 21. This argument contravenes longstanding precedent of this Court, which "make[s] clear that in determining the legitimacy of a congressional act [courts] do not look to the motives alleged to have prompted it." *Eastland*, 421 U.S. at 508. Said another way, "[s]o long as Congress acts in pursuance of its constitutional power, the Judiciary lacks authority to intervene on the basis of the motives which spurred the exercise of that power." *Barenblatt*, 360 U.S. at 132. This Court is "bound to presume that the action of the legislative

body was with a legitimate object, if it is capable of being so construed." *McGrain*, 273 U.S. at 178 (quoting *People ex rel. McDonald v. Keeler*, 99 N.Y. 463, 487 (1885)); *see Watkins*, 354 U.S. at 200 ("the motives of committee members . . . alone would not vitiate an investigation which had been instituted by a House of Congress if that assembly's legislative purpose is being served").

To be sure, these investigations may have the potential to uncover violations of law, and some members of Congress may have an interest in knowing whether the President has violated the law, *see* Pet'rs Br. 37-38, but that does not mean the investigation therefore lacks a legitimate legislative purpose. To the contrary, it is possible that the President has violated the law *and* that Congress may wish to legislate on topics related to the President's conflicts of interest and financial disclosures, or with regard to money laundering and election interference. As Petitioners themselves acknowledge, "a legislative investigation is not illegitimate because it might incidentally expose illegal conduct." *Id.* at 42. Indeed, as this Court has explained, although Congress "is without authority to compel disclosures for the purpose of aiding the prosecution of pending suits," its authority "to require pertinent disclosures in aid of its own constitutional power is not abridged because the information sought to be elicited may also be of use in such suits." *Sinclair*, 279 U.S. at 295; *see McGrain*, 273 U.S. at 179-80 ("Nor do we think it a valid objection to the investigation that it might possibly disclose crime or wrongdoing on [an executive branch official's] part."); *Hutcheson v. United States*, 369 U.S. 599, 618 (1962) ("[S]urely a congressional committee which is engaged in a legitimate legislative investigation need not grind to a halt . . . when crime or wrongdoing is disclosed." (internal citations

omitted)); *see generally Quinn*, 349 U.S. at 161 ("the power to investigate . . . cannot be used to inquire into private affairs *unrelated to a valid legislative purpose*" (emphasis added)).

Petitioners argue that "the focus on 'certain named individuals' . . . show[s] that the subpoenas have the hallmarks of law-enforcement investigations—not legislative inquiries." Pet'rs Br. 40 (internal citation omitted). But the President of the United States is no ordinary person. It makes sense that Congress would investigate the President's financial entanglements when it seeks to craft financial-disclosure and conflict-of-interest laws that would affect him and other Executive Branch officials. Likewise, it makes sense that Congress would investigate the President's finances when it seeks to craft laws regarding foreign interference in our political system.

Relatedly, the Solicitor General says that "there is no discernible reason why a congressional investigation into the general problem of money laundering should focus on the President in particular." DOJ Br. 29. He ignores, however, that the Committees' requests for *this* President's financial information was based on, with regard to the Oversight Committee's request, reports that the President has misreported financial information on federal disclosure documents, and with regard to the other Committees' requests, reports regarding the President's relationship with both Deutsche Bank and Russian interests, as well as allegations that shell companies were misused to purchase Trump properties. Thus, the Committees had good reason to believe that financial information about *this* President and his businesses would offer illuminating information that would guide its consideration of remedial legislation on these issues.

4. In the face of all this contrary precedent, Petitioners make one final argument with regard to the Oversight Committee's request: they say that *every* potential piece of legislation that could arise from that investigation—whether already proposed or purely hypothetical—would be unconstitutional as applied to the President, and therefore there can be no legitimate legislative purpose for the Committee's investigation. Their theory is apparently that any statutory limit on the President's conflicts of interest and any disclosure requirement imposed on the President would amount to a prerequisite to holding the Office of President that would violate Article II, § 1, cl. 1—which delineates the qualifications for that office—or would otherwise interfere with the President's ability to "take Care that the Laws be faithfully executed," U.S. Const. art. II, § 3. *See* Pet'rs Br. 45-52.

This argument is as astounding as it is wrong. As an initial matter, the Supreme Court has made clear that Congress may investigate so long as the investigation is not "*plainly incompetent or irrelevant* to any lawful purpose." *McPhaul*, 364 U.S. at 381 (internal citation and quotations omitted) (emphasis added). Here, laws governing the President's disclosures and conflicts of interest, like the Ethics in Government Act of 1978, have been on the books for decades. Congressional investigation into whether to amend those laws, or to pass new laws imposing other ethical constraints on the President, can hardly be "plainly incompetent or irrelevant to any lawful purpose." And given this long history of ethics legislation, it would be remarkable for this Court to rule that any such hypothetical legislation is unconstitutional before it is even passed, let alone applied to the President.

On top of that, there is no basis for Petitioners' radical assertion that Congress cannot apply *any* ethics

legislation to the President. Indeed, Petitioners cite no case—whether from this Court or any other—that comes close to supporting their sweeping constitutional rule that would exempt the President from all disclosure and conflict-of-interest laws. That is because no such case exists.[4] Rather, the *only* source that Petitioners cite for this proposition is a letter from then–Deputy Attorney General Laurence H. Silberman to an Assistant to the President in 1974 which suggests—in passing—that there *might* be constitutional questions that arise when applying *some* conflict-of-interest laws to the President. *See* Letter from Laurence H. Silberman, Deputy Att'y Gen. to Richard T. Burress 2 (Aug. 28, 1974), bit.ly/31k3rql ("[s]ome doubt exists as to the constitutionality of applying [18 U.S.C. § 208(a)] to the President"). And even this letter—again, Petitioners' only support—does not stand for the proposition that *all* laws requiring presidents to disclose finances or conflicts, set up a blind trust, or otherwise arrange their financial holdings in a certain way upon taking office are unconstitutional.

5. The Solicitor General, for his part, suggests that congressional subpoenas pertaining to the President "should be subject to heightened scrutiny of [their] legitimacy" compared to other congressional subpoenas. DOJ Br. 22. Conspicuously, however, the Solicitor General fails to cite a *single* precedent from this Court

[4] The cases that Petitioners *do* cite do not articulate such a rule. For instance, *U.S. Term Limits, Inc. v. Thornton*, 514 U.S. 779 (1995), held that states cannot limit the number of terms that a Member can serve. *Id.* at 782-83. And *Powell v. McCormack*, 395 U.S. 486 (1969), held that Congress cannot exclude a Member who was duly elected and met the Constitution's eligibility requirements. *Id.* at 489. Neither case says anything about whether Congress may impose conflict-of-interest restrictions or disclosure requirements on members of Congress, let alone the President.

or any court that even suggests, let alone holds, that a congressional subpoena that would otherwise be valid should be prohibited merely because the subpoena furthers an investigation pertaining to the President. To be sure, as the Solicitor General notes, the Court in *Watkins* warned that lawmakers might use investigations for "personal aggrandizement," to "'punish' those investigated," or "to expose for the sake of exposure." *Id.* at 19 (quoting *Watkins*, 354 U.S. at 187, 200). But under *Watkins*, courts always ask whether a congressional investigation is "related to, and in furtherance of, a legitimate task of the Congress," regardless of the subject of the investigation. *Watkins*, 354 U.S. at 187. And so long as it is, the investigation is permissible. *Id.* at 200 ("motives alone would not vitiate an investigation which had been instituted by a House of Congress if that assembly's legislative purpose is being served"); *id.* at 187 (investigation valid unless impermissible goals are the "sole[]" purpose for the inquiry). *Watkins* does not suggest that the nature of the inquiry is different if the President is the subject of the investigation.

Lacking any precedent on point, the Solicitor General borrows a standard that the D.C. Circuit has applied to congressional subpoenas that cover official presidential records protected by executive privilege. DOJ Br. 23, 24, 28, 30 (citing *Senate Select Comm. on Presidential Campaign Activities v. Nixon*, 498 F.2d 725, 731 (D.C. Cir. 1974) (en banc)). But that court applied a heightened standard for those types of *official* records "to ensure that the President and those upon whom he directly relies in the performance of his duties could continue to work under a general assurance that their deliberations would remain confidential." *Senate Select Comm.*, 498 F.2d at 730. No court has ever suggested that the standard that applies to

subpoenas for official, privileged material should apply to *all* congressional subpoenas pertaining to the President—even those seeking the President's personal financial records from a third-party accounting firm or bank.

And, contrary to the Solicitor General's argument, this Court's recognition that "[t]he President occupies a unique position in the constitutional scheme," *Nixon v. Fitzgerald*, 457 U.S. 731, 749 (1982), and therefore has certain immunities from litigation—like, for instance, "absolute immunity from damages liability predicated on his official acts," *id.*—provides no basis for applying that heightened standard to all *congressional* subpoenas related to the President. Indeed, this Court has carefully cabined that doctrine, refusing, for instance, to prevent a judicial subpoena for the President's testimony or to stay a civil trial concerning the President's personal conduct despite the fact that it "may consume some of the President's time and attention." *Clinton v. Jones*, 520 U.S. 681, 708 (1997). If the President's immunity from judicial process cannot prevent him from being subject to civil damages litigation—including a civil trial and compelled testimony—while in office, it certainly provides no basis for applying a heightened standard before a third-party accounting firm or bank may comply with a congressional subpoena for the President's non-privileged, personal financial records.

In any event, even if some heightened standard did apply here, the subpoenas at issue would readily satisfy it. For the reasons explained above and in the Committees' brief, Resps. Br. 17-36, the Committees "clearly identified a specific legitimate legislative purpose behind each subpoena" and "clearly explained how the information sought in each subpoena was

demonstrably critical to those respective purposes," DOJ Br. 26.

* * *

In sum, Petitioners' and the Solicitor General's arguments, if accepted, would drastically cabin the scope of Congress's power to investigate. Such a result would be at odds with our nation's rich history of congressional investigations and with decades of this Court's precedents affirming that Congress possesses broad power to investigate. This Court should reject Petitioners' arguments and affirm the judgments below.

CONCLUSION

For the foregoing reasons, the judgments of the courts of appeals should be affirmed.

Respectfully submitted,

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